VPH

IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 524 OF 2007

Office notes, office memoranda of coram, appearances, Court's orders directions & Registrar's orders	:	Court's or Judge's order

Mr. S. M. Oak with Mr. Sagar Joshi Advocate for the petitioner

Mr. S. B. Shete, Advocate for respondent No.1.

Mr. R. S. Apte, Advocate for respondent No.2.

CORAM: F.I. REBELLO,
AND
R. V. MORE, JJ.

DATE : JANUARY 19, 2007.

P.C.:
. Not on board.

Mentioned, taken on board.

2. Rule. Heard forthwith. The petitioner has filed his nomination for contesting elections

to Thane Municipal Corporation. The last date for filing the nomination was 15th January, 2007 by 3.00 p.m. The petitioner filed his nomination on 15th January 2007 and that nomination was accepted. It is the case of the petitioner that he also deposited necessary security deposit but had not annexed the receipt alongwith the nomination form, though it was duly paid. On the date of scrutiny, nomination paper was rejected, on the ground that there was no proof, accompanying the nomination paper of deposit of the money. The nomination paper was purportedly rejected in

exercise of powers under Rules of the Election Rules.

3. On behalf of petitioner, the learned counsel submits that there is no ground under Rule 9, under which nomination paper of the petitioner could have been rejected. On the contrary, on behalf of the State Election Commission, it is pointed out that they have instructions issued to the Returning Officers under which the nomination paper has to be accompanied by the receipt of proof of deposit of the money. It is also pointed out that the petitioner has a

remedy by way of election petition. On behalf of respondent no.2, it is submitted that as the nomination form was not accompanied by the receipt of deposit, in terms of instructions, it was within the jurisdiction of respondent no.2, to have rejected the same.

4. A nomination form could have been rejected if there was a provision either in the Act or in the Rules. In the instant case, neither the Act nor the Rules provide for rejection of a nomination paper, which is not supported by the receipt of proof of payment of deposit. These are only instructions issued by the

Election Commission to the Returning Officers. In these circumstances, it was open to the respondent no.2 not to accept the nomination paper un-accompanied by proof of receipt. Once having accepted it, it was not open to him to reject the same under Rule 9. Apart from that, in the instant case, in fact petitioner has deposited the money on the 15th January 2007 itself. In these circumstances, we are clearly of the view that action of respondent no.2 in rejecting the petitioner’s nomination form was without authority of law and consequently the order dated 16th January 2007 is set aside.

Respondent no.2 is directed to treat the petitioner's nomination form as valid and allow him to contest the election. Petitioner is nominated as a candidate of the political party, which has issued Annexture-II in his favour. Respondent No.2 to allot him the symbol in terms of Annexture II and allow him to contest the elections. Rule made absolute accordingly. There shall be no order as to cost.

5. All parties to act upon the authenticated copy of this order.

[R. V. MORE, J.] **[F. I. REBELLO, J.]**